

JUN 29 1998

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 97-03473

COUNSEL: NONE

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

Comments be added to Sections VI (**Rater** Overall Assessment) and VII (Additional Rater Overall Assessment) on the Officer Performance Report (OPR) closing 1 January 1993, and that he be given consideration for promotion to the grade of lieutenant colonel by Special Selection Board (SSB) for the Calendar Year 1997 (CY97C) lieutenant colonel board.

APPLICANT CONTENDS THAT:

The omission of crucial comments concerning attending Intermediate Service School in residence and follow-on job assignment from the contested OPR significantly contributed to his being **passed** over for **promotion** to lieutenant colonel by the CY97C board.

Other areas that may have contributed to his nonselection for promotion to the grade of lieutenant colonel are: there are duplicate and multiple entries for some less significant job titles, however, commander appears only once even though he had two OPRs as a squadron commander; although his official job title was Vehicle Operations Officer, he was Chief of Vehicle Operations; his assignment history did not show the job title of Chief, Plans and Programs after he cross-trained from the missile career field; he has **only** one Meritorious **Service** Medal (**MSM**), even though he had been recommended for MSMs four times; his ROTC duty history was not shown on three consecutive Officer Pre-Selection Briefs and had to be put on **at** his insistence each year; the length of **his** tours at Kansas and Alaska may have given the appearance of homesteading; and the indorsement levels on some of his earlier OPRs as a missile officer were at the wing level.

In support of his request, applicant provided his expanded comments; a copy of the contested OPR and **Performance** Feedback **Worksheet** prepared during the contested rating period, as well as statements from the rater and additional **rater** of the contested report, his former wing commander and his current senior rater; and copies of an OPR closing 3 February 1988 and the Officer Selection Brief (OSB) reviewed by the CY97C Lt Colonel Board. (**Exhibit A**)

STATEMENT OF FACTS:

Information extracted from the Personnel Data System (PDS) reflects that applicant was appointed as second lieutenant, Reserve of the Air Force, on 22 December 1981. He was ordered to extended active duty on that same date. He has served on continuous active duty and was integrated into the Regular component on 5 July 1985. He was progressively promoted to the grade of major, with a date of rank and effective date of 1 March 1994.

A resume of applicant's OERs/OPRs follows:

| <u>PERIOD CLOSING</u> | <u>OVERALL EVALUATION</u> |
|-----------------------|--------------------------------|
| 26 Apr 82 | Education/Training Report (TR) |
| 28 Feb 83 | 1-1-1 (w/LOE) |
| 4 Jan 84 | 1-1-1 (w/LOE) |
| 10 Nov 84 | 1-1-1 |
| 21 Jun 85 | 1-1-1 |
| 31 Jul 86 | 1-1-1 (w/LOE) |
| 3 Feb 87 | TR (w/LOEs) |
| 3 Feb 88 | 1-1-1 |
| 13 May 88 | TR |
| 10 Sep 88 | Meets Standards (MS) |
| 10 Sep 89 | MS |
| 15 Jan 90 | MS |
| 19 Jul 90 | MS |
| 19 Jul 91 | MS |
| 31 May 92 | MS |
| * 1 Jan 93 | MS |
| 11 May 93 | MS |
| 11 May 94 | MS |
| 11 May 95 | MS |
| 11 May 96 | MS |
| 4 Apr 97 | TR |
| # 11 May 97 | MS |

* Contested report.

- Top report in file when he was considered and not selected for promotion by the CY97C Lt Colonel Board, which convened on 21 July 1997.

AIR FORCE EVALUATION:

The Chief, Appeals and SSB Branch, AFPC/DPPP, reviewed this application and recommended denial. Their comments, in part, follow.

Noting the statements provided by the rater and additional rater on the OPR closing 1 January 1993, DPPP stated that evaluations

receive exhaustive reviews prior to becoming a matter of record. Any **report can be rewritten to be** more hard hitting, to provide embellishments, or enhance the ratee's promotion potential. But the time to do that is before the report becomes a matter of record. Neither of **the supporters of the** applicant's appeal **explain how they were** hindered from rendering a fair and **accurate assessment of the applicant's performance prior to the report** being made a matter of record. The appeals process does not exist to recreate history or enhance chances for promotion. As such, DPPP is not convinced the contested report is not accurate as written and does not support **the** request to add **statements** in Sections VI and VII.

DPPP noted that the OPR closing **3** February 1988 has been a matter of record for nine plus years. Although the applicant **contends** his duty title **should be "Chief, Plans and Programs,"** he has failed to provide any support from those who rendered the report.

With regard to the other issues applicant contends may have attributed to his nonselection, DPPP stated the time to bring these issues to the board's attention is before the promotion board by letter to the board president, not after. Each eligible officer considered by the CY97C board received detailed instructions for review of their preselection briefs and associated records some **90 days** prior to the board. It was applicant's responsibility to notify the board of any issues that he believed to be important to his promotion consideration. However, DPPP did not find **any** record the applicant wrote such a letter to the **board president**. DPPP, therefore, **does** not believe applicant exercised reasonable diligence to ensure his records were accurate prior to the board and strongly recommends denying the applicant's request for SSB consideration on these issue.

The complete evaluation is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Applicant disagreed with the comments in the advisory opinion that his **request** was not timely and **that it lacked merit**. He provided **his** expanded comments addressing **specific** issues **raised in** the advisory.

With regard to the other issues which may have contributed to his nonselection for **promotion**, **applicant stated there was no letter** to the board on these issues because it **was** the perception of many senior officers who knew his record that he would have been at the **top of the list of** his in the zone look for promotion to lieutenant colonel.

He reiterated his contention that if comments concerning attending ACSC in **residence** and **follow-on job assignment** had been put in the contested OPR, he would have been promoted to lieutenant colonel by

the CY97C promotion board. This omission was unintended as attested to **by** the evidence submitted with his application.

Applicant's complete response is at Exhibit E.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was not timely filed; however, it is in the interest of justice to excuse the failure to timely file.

3. Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. We have noted applicant's complete submission in judging the merits of the case, including the supporting statements from the rater and additional rater on the contested report. While supportive of the **applicant's** appeal, the statements from the evaluators do not, in our opinion, support a finding that they were precluded from including comments regarding school recommendations and follow-on assignment recommendations on the contested report. The rater indicated that he did not include this information because it was his understanding that such information was prohibited. However, we note that applicant's five reports prior to the contested report included school recommendations and assignment recommendations. Based on a review of the evidence provided, we are not persuaded that the contested report is in error as rendered, only **that** it could have been written differently. Based on the foregoing, and in the absence of evidence to the contrary, we find no compelling basis to recommend favorable action on applicant's request to amend the contested report.

4. The applicant has offered a number of reasons which he believes may have attributed to his nonselection for promotion by the CY97C Lieutenant Colonel Board; i.e., duty titles, assignment history, awards, indorsement levels on **earlier** OERs, etc. However, no evidence **has** been presented to substantiate these contentions. In addition, **the** applicant could have made this information available to the selection board members through a letter to the Board President. However, it **appears that** he did not exercise this right. In view of the foregoing, and in the absence of evidence showing that applicant's records were improperly constituted when he was considered for promotion by the CY97C Lieutenant Colonel Board, we **conclude** that there is no basis upon which to recommend that he reconsidered for promotion to the grade of lieutenant colonel by Special Selection Board.

THE BOARD DETERMINES THAT:

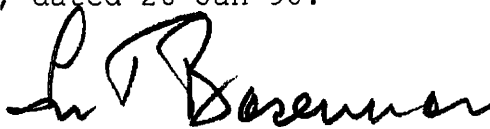
The applicant be notified that the evidence presented did not demonstrate the existence of probable material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered this application in Executive Session on 15 May 1998, under the provisions of AFI 36-2603:

Mr. LeRoy T. Baseman, Panel Chair
Mr. Steven A. Shaw, Member
Mr. Parker C. Horner, Member

The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 18 Nov 97, w/atchs.
Exhibit B. Applicant's Master Personnel Records.
Exhibit C. Letter, AFPC/DPPP, dated 22 Dec 97.
Exhibit D. Letter, SAF/MIBR, dated 12 Jan 98.
Exhibit E. Letter, Applicant, dated 26 Jan 98.


LEROY T. BASEMAN
Panel Chair



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR FORCE PERSONNEL CENTER
RANDOLPH AIR FORCE BASE TEXAS



22 DEC 1997

MEMORANDUM FOR AFBCMR

FROM: HQ AFPC/DPPP

550 C Street West, Suite 8

Randolph AFB TX 78150-4710

SUBJECT: [REDACTED]

Requested Action. Applicant requests comments be added in Sections V and VII of his officer performance report (OPR) that closed out 1 Jan 93; removal of duplications of duty titles in the assignment history portion of his OSB; duty title on his 3 Feb 88 OPR changed from 'Vehicle Operations Officer' to 'Chief, Plans and Programs'; mention of his recommendations for four meritorious service medals (MSMs); addition of his Reserve Officer Training Corps (ROTC) duty history; explanation of his extended tenure at Kansas and Alaska; reason he did not have higher level indorsements on some of his early officer evaluation reports (OERs). If his requests are approved, he requests Special Selection Board (SSB) consideration for promotion to the grade of lieutenant colonel by the CY97C (21 Jul 97) (P0597C) central promotion selection board with the inclusion of the revised report in his officer selection record (OSR).

Basis for Request. Applicant contends the omission of crucial comments concerning attending Intermediate Service School (ISS) in residence and a follow on job assignment from the Jan 93 OPR contributed significantly to his nonselection for promotion to lieutenant colonel by the P0597C board. He would also like to address the other issues listed above, as they may have also been factors attributing to his nonselection.

Recommendation. Time bar. If the AFBCMR considers, deny due to lack of merit.

Facts and Comments:

a. Application is not timely. If the AFBCMR considers, we recommend denial due to lack of merit. By law, a claim must be filed within three years of the date of discovery of the alleged error or injustice (10 U.S.C. 1552[b]). It is obvious that the errors claimed here were discoverable at the time they occurred. The applicant provided nothing to convince us that the errors were not discoverable until 16 Oct 97, nor has he offered a concrete explanation for filing late. While we would normally recommend the application be denied as untimely, we are aware that the AFBCMR has determined it must adhere to the decision in the case of *Detweiler v. Pena*, 38F.3d591 (D.C. Cir 1994)--which prevents application of the statute's time bar if the applicant has filed within three years of separation or retirement.

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b. AFR 36-10, The Officer Evaluation System, 1 Aug 88, is the governing directive.

c. In support of his appeal, the applicant includes a personal brief; copy of the contested OPR; copy of a performance feedback worksheet (PFW); copy of letters from rater and additional rater; letters from individuals outside the rating chain of the contested report; a letter from the applicant's senior rater from the P0597C promotion board; copy of the applicant's 3 Feb 88 OPR; and copy of the applicant's officer selection brief

d. OPR issues:

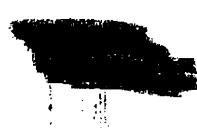

(1) Air Force policy is that an evaluation report is accurate as written when it becomes a matter of record. It takes substantial evidence to the contrary to have a report changed or voided. To effectively challenge an OPR, it is important to hear from all the evaluators from the report—not only for support, but for clarification/explanation. The letters from outside the rating chain are not germane to this case. The rater from the 1 Jan 93 OPR states in his letter he conducted a thorough review of the applicant's performance, achievements and potential and concluded that each were of the highest order and warranted continued promotion. However, he states he did not mention the follow-on job assignment recommendations and school recommendations because he thought they were prohibited statements. Although he states "I recall during this period (covered by the OPR) in AETC that OPRs with even "veiled" references to specific promotion as well as PME attendance were being sent back for correction." However, the applicant was also in AETC (then ATC) for the five OPRs immediately preceding the contested OPR and all of those five reports had assignment and school recommendations. If the rater did, in fact, make a thorough review of the applicant's records, he would have seen the follow-on assignment recommendations and school recommendations on the previous five OPRs. The additional rater/reviewer states, "he was clearly remiss in not making a recommendation about school or future assignments on the OPR which he signed on 2 Jan 93." Evaluations receive exhaustive reviews prior to becoming a matter of record. Any report can be rewritten to be more hard hitting, to provide embellishments, or enhance the ratee's promotion potential. But the time to do that is before the report becomes a matter of record. Neither of the supporters of the applicant's appeal explain how they were hindered from rendering a fair and accurate assessment of the applicant's performance prior to the report being made a matter of record. The appeals process does not exist to recreate history or enhance chances for promotion. As such, we are not convinced the contested report is not accurate as written and do not support the request to add statements in Sections V and VII.

(2) The OPR rendered to the applicant 3 Feb 88 has been a matter of record for nine plus years. The applicant contends his duty title should be changed from "Vehicle Operations Officer" to "Chief, Plans and Programs." However, he failed to provide any support from those who rendered the report. As mentioned above, evaluations are considered accurate as written when it becomes a matter of record. It takes considerable evidence to have a report changed or voided. It is apparent the OPR did not have an adverse effect on the applicant's promotion potential, as he was promoted to the grade of major with it filed in his OSR.

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e. The applicant contends duplications of duty titles in the assignment history **portion of his OSB**; mention of **his** recommendations for four Meritorious Service Medals (MSMs); addition of **his** Reserve Officer Training **Corps** (ROTC) duty **history**; explanation of **his** extended tenure at Kansas **and Alaska**; and the reason he did not **have** higher level **indorsements** on **some of his** early officer evaluation reports (OERs) **may** have attributed to **his** nonselection. However, the **time to bring** these issues to the board's attention is **before** the promotion board by letter to the board president, not after. Each eligible officer considered **by** the P0597C board received detailed instructions for review of their preselection briefs **and** associated records some 90 days prior to the board. The instructions clearly state "Officers are responsible for reviewing their PRF, OPRs and data on their preselection brief for accuracy prior to **the board** date, addressing **all** concerns and discrepancies through their servicing **Military Personnel Flight (MPF)**, **and** if necessary, their chain of command and senior rater. Officers will not be considered **by** SSB if, in exercising reasonable diligence, the officer should have discovered **an** error or **omission** in his/her records and could have taken timely corrective action." It was **his** responsibility to **notify** the **board of the** issues mentioned above, if he believed **them** to be important to **his** promotion consideration. However, **we** do not **find any** record **the** applicant wrote **such a** letter **to the** board president. The applicant states, "I **am** sure **that** had the **original** promotion board had **the** benefit of this information, I would have been promoted." Why then, we must wonder, did the applicant not address these issues in **a** letter **to** the board president prior to the promotion **board**? We, therefore, do not believe he exercised reasonable diligence to **ensure** **his** records were accurate prior to the board and **strongly** recommend denying the applicant's request for **SSB** consideration on these issues.

Summary. Based on the evidence provided, **our** recommendation **of denial** is appropriate.



MARIANNE STERLING, Lt Col., USAF
Chief, Appeals and SSB Branch
Directorate of Personnel Program ~~Mgt~~

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